Inadmissibility vs. Deportability:
Who’s Inadmissible?
Who’s Deportable?
Why Should You Care?

March 26, 2014
Dallas, TX

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Inadmissibility vs. Deportability

• Jack and Jill, from the UK, are charged with possession of 30 grams of marijuana. They plead guilty, are sentenced to probation, and head out the courtroom door to go home. They both are stopped by ICE officers but only Jill is taken into custody and put in proceedings. Why?
**Inadmissibility vs. Deportability**

Thelma and Louise, from Germany, are convicted of owning unregistered firearms. They too are interviewed by ICE after paying a fine and leaving court. Louise is issued an NTA but ICE releases Thelma without placing her in proceedings. What's going on?

**Inadmissibility vs. Deportability**

• Your client Oscar entered the U.S. on a tourist visa and is now applying for adjustment. Your supervisor tells you that Oscar's misdemeanor DV offense, for which he received probation, will not affect his eligibility to adjust status but may affect him if his application is denied. Why?

**YOU CAN'T COME IN/YOU MUST LEAVE**

• Two ways to bar noncitizens from being in U.S.

  • **Inadmissibility** Grounds = INA §212(a)
  
  • **Deportability** Grounds = INA § 237(a)
CONSEQUENCES

• EXCEPTIONS

• WAIVERS

• If no exception or waiver applies, individual may be barred from entry or a benefit, or subject to removal

INADMISSIBILITY GROUNDS:
INA § 212(a)

• Health-related grounds
• Criminal-related grounds
• National security grounds
• Public charge
• Labor protection grounds
• Fraud or misrepresentation
• Documentation requirements
• Military service in the U.S.
• Prior removals or unlawful presence in the U.S.
• Miscellaneous grounds

DEPORTABILITY GROUNDS:
INA 237(a)

• Inadmissibility at time of entry
• Crime grounds
• Failure to register/False Documents
• Security Related Grounds
• Public Charge
• Unlawful Voters
SUBJECT TO INADMISSIBILITY

- Noncitizens who entered without inspection
- Noncitizens paroled into U.S.
- Noncitizens arriving at border or port of entry
- Noncitizens applying for visa or adjustment of status
- Noncitizens applying for certain benefits

INADMISSIBILITY IN ACTION

Glenda comes to U.S. border at Detroit with an expired tourist visa. CBP officer finds her not admissible because she doesn't have a valid visa to enter U.S.

Gail came to U.S. without inspection ("EWI") in 1998. Even though Gail has lived in U.S. for 16 years, she will be charged with inadmissibility if apprehended by DHS because she was never "admitted" to U.S.

INADMISSIBILITY IN ACTION

Ramona applied for an immigrant visa at the U.S. consulate in Ciudad Juarez. During her medical exam she told the doctor she occasionally smoked marijuana. At her consular interview, she was found inadmissible for being a drug abuser, and her visa application was denied.
SUBJECT TO DEPORTABILITY

- noncitizens who were “inspected and admitted”

DEPORTABILITY IN ACTION

Natalie came to U.S. on tourist visa in 2007 and has remained longer than her authorized stay. If arrested by an immigration officer, Natalie is subject to charge of deportability in removal proceedings.

LPR Kevin, from Ireland, is convicted of sale of cocaine. As a result of this conviction, Kevin is deportable, and faces losing his residency in removal proceedings.

WHO IS INADMISSIBLE? DEPORTABLE?

- Marta, from Mexico, who entered without inspection?
- Xue Shan, from China, who overstayed tourist visa?
- Mark, an LPR from England, who was just convicted of drug trafficking?
- Caterina, from Argentina, who is applying for an immigrant visa at the U.S. consulate in Buenos Aires?
What About LPRs?

Murtada from Sudan has been an LPR for 15 years. In 2013, he was convicted of felony theft and sentenced to one year of probation. Now he has completed his probation and wants to visit a friend in Germany – any reason he shouldn’t do that?

LPRs and Admissibility

LPRs returning to U.S. not subject to inadmissibility at border unless:

– Abandoned or relinquished LPR status
– Absent for > 180 consecutive days
– Engaged in illegal activity after leaving U.S.
– Left U.S. while in removal proceedings
– Tried to EWI
– Committed criminal offense under 212(a)(2)

For LPRs with convictions before 4/1/1997:


Effect of LPR petitioner’s brief travel abroad on his legal permanent resident status is determined not by IIRIRA, but by the legal regime in force at the time of his conviction
Admissibility and Immigration Benefits

- Must be “admissible” for some types of immigration benefits or status
- How do you know?

Can Both Categories Apply to the Same Client?

- Micheline’s application was not approved by the Asylum Office. She was placed in removal proceedings and charged with a ground of __________.
- The Immigration Judge granted Micheline asylum in May 2012. She is now applying for adjustment. The Service Center will determine if she is subject to any grounds of __________.

Can Both Categories Apply to the Same Client?

Marco, from Venezuela, entered the U.S. with a tourist visa in 2008. He is now married to a USC and is applying for adjustment of status.

Marco has a retail theft conviction punishable by one year, but he was sentenced to probation. He is concerned about how this offense will affect his eligibility and also wants to know what will happen if his application is denied.
Inadmissibility and Deportability: How Does DHS Find Out?

- Visa applicants
- Applicants for adjustment, other benefits
- Naturalization applicants
- Criminal convictions
- Medical exams
- Biometrics
- Information on applications
- Interviews

Inadmissibility vs. Deportability: When is a Person Admitted?


An alien seeking to show that s/he has been “admitted” to the U.S. pursuant to INA Section 101(a)(13)(A) need only prove procedural regularity in his or her entry, which does not require the alien to be questioned by immigration authorities or be admitted in a particular status.

Are You Admitted if you….

- Were a passenger in a car inspected at a border crossing but you had no papers and were not questioned?
- Showed a fake residency card to enter?
- Made a false claim to USC status to enter?
Are You Admitted if you…..

• came in EWI but now have TPS?
• entered the U.S. as a refugee?
• came in as a parolee but were then granted asylum?
• came in EWI but now have U status?

Why Admission Matters:

• Potential eligibility to adjust status
• Subject to grounds of deportability
• Burden of proof
• Measures exposure to CIMT crime-based deportability

Questions?

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